

JOHN H. DRURY,
vs.
ROBERT K. ROBERTS. } MARCH TERM, 1848.

[INJUNCTION—RECEIVER—PARTNERSHIP—PRACTICE.]

THE ordinary form in which the court interposes its aid in the case of bills *quia timet* is by injunction and the appointment of a receiver.

Upon the dissolution of a partnership, each partner is entitled to assist in collecting the assets, paying the debts, and winding up the affairs of the firm.

Any interference with this mutual right, or the exclusion by either partner of the other from the enjoyment of it, will justify this court in taking the management of the concern into its own hands.

But where a party has the legal right to the possession and control of the funds of the partnership, the court interferes with great reluctance, and a strong case of abuse, or danger of abuse, must be shown before a *bona fide* possessor will be displaced.

Yet if a *bona fide* possessor is wasting or misapplying the funds in his hands, or where there is danger from his insolvency, fraud, or misconduct, the court will not hesitate to displace him and appoint an officer of its own in his place.

Upon a motion to dissolve, the defendant can only rely upon so much of the answer as is responsive to the bill, and matter in avoidance cannot be allowed to have any effect.

[The bill in this case was filed on the 4th of April, 1848, alleging that the complainant entered into copartnership with the defendant, under the name and firm of *Roberts & Drury*, on the 3d of October, 1845, which continued until the 3d of April, 1847, when it was dissolved by mutual consent. That at the time of the dissolution, the firm was largely indebted to merchants in the city of Baltimore, and elsewhere, for the purchase of different articles of merchandise. That upon the undertaking of the defendant to secure and indemnify the complainant from liability on account of these debts, the former was permitted to collect the assets, pay off the debts, and wind up the affairs of the partnership. The bill then charges that the defendant had received all the goods and effects of the firm, but had neglected to collect the debts due it, or pay the debts due by the firm, and was wasting and misapplying the said property and effects, and that he was in insolvent circumstances, and prays for an injunction restraining the defendant from dis-